S.B. Civil Reg.First Appeal No. 3/89
M/s Shiv Shankar Oil Mill Vs. M/s Bhoora Lal Haraklal

Date of order : 15.03.2007

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. M.R. Thanvi for the appellant.

This appeal arises out of the decision of the learned Addl. District Judge, Chittorgarh in Civil Original Suit NO. 27/85 dated 21.1.1988. The suit was filed by the plaintiff respondent alleging interalia that he had sent 100 bags of groundnuts to the appellant defendant by truck. The truck was intercepted by the police and there being no documents for the alleged groundnuts, the goods were seized and sealed by the Supplies Department. Before Supplies Department, the appellant appeared for getting the goods released but the same was not released in his favour because this was held by the Collector that the the goods do not belongs to him and they belongs to the plaintiff/respondent.

The case of the appellant before me is that he did not get the goods because the same were intercepted. Intercepting authority held that the groundnuts do not belongs to him. The case of the plaintiff was that the groundnuts were sent to him by truck vide bill exhibit/3. Original bill Ex. /3 has been produced on record and on this

document, there are no signatures of any person belonging to the appellant firm. There is an endorsement that Kanji has taken 'D' form. Kanji is said to be Kanhaiyalal who is the son of Fatehlal, partner of the appellant firm. Curiously on Ex.3, number of the truck has also not embossed. It is said that bill was sent to the appellant. The appellants have claimed that the bill was sent in envelope Ex. A/1. Bill as received by appellant was filed by him before the collector for getting the goods released.

Be that as it may, Ex. /3 is the original document as claimed by plaintiff. The production of original bill shows that it was not given to the appellants. It was necessary under the law that goods should have accompanied bill. This formality was not fulfilled by the dispatcher of the goods. In this background, the allegations of the plaintiff that the bill was taken by Kanji @ Kanhaiyalal when the goods were taken by Kanji @ Kanhaiyalal falls to ground, because the bill was kept by the plaintiff. The best case could be in favour of the plaintiff that Kanji had taken D form, merely taking of 'D' form do not make out a case in favour of the plaintiff that he had fulfilled the requirements of law. The goods were required to carry the bills alongwith it and thus the goods were seized by the Supplies Department. No effort was made by the plaintiff to get the goods

released in his favour after refusal to the appellant. It is also noteworthy that there was another consignment of 100 bags in the same truck. The same was seized. No efforts have been made by the plaintiff to show that such goods were sent legally.

In any case the appellant had filed the documents alleging that the contract was facilitated through M/s R.K. Trading Company Chittorgarh. The delivery was to be made at the place of the appellant, unless the delivery was made at the place of the appellant, the contract had not been completed. In that view of the matter, it cannot be said the the said contract concluded and the case of the plaintiffs stood proved. The findings of the trial court are not liable to be sustained and if the contract was not fulfilled by the plaintiff, he was not liable to be awarded contract money and, therefore, the suit was liable to be dismissed. The judgment and decree under appeal deserves to be set aside. Accordingly the same are set aside. The appeal is allowed as indicated above.

(BHAGWATI PRASAD), J.

ns.